

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

CONTINENTAL CASUALTY
INSURANCE COMPANY, an Illinois
Corporation,

Plaintiff,

VS.

ZURICH AMERICAN INSURANCE COMPANY, a New York Corporation, and TCR PACIFIC NORTHWEST CONSTRUCTION 2002 LIMITED PARTNERSHIP, a foreign limited partnership, and SAFEWAY SERVICES, INC., a Delaware Corporation,

Defendants.

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KING, Judge:

On January 29, 2009, I filed an Opinion and Order concluding that Safway breached its contract to purchase insurance and must pay the defense costs incurred in the underlying action. I also dismissed all claims against Zurich and dismissed TCR's counterclaims against Continental for a declaratory judgment that Continental has a duty to defend and indemnify TCR and for breach of contract as an additional insured under the policy between Continental and PCI.

TCR now asks me to reconsider its counterclaims against Continental. After concluding that Safway breached its contract, I did not address whether there were additional enforceable legal obligations. Thus, I will reconsider the prior ruling.

TCR contends that Safway's breach of its agreement to procure insurance for the benefit of TCR and PCI does not bear upon or extinguish Continental's duty to provide TCR a complete defense in the underlying action. TCR is an additional insured under the Blanket Additional Insured Endorsement in the Continental Policy, based on the requirements in the PCI/TCR subcontract. Moreover, the coverage is on a primary basis, also due to the subcontract requirements. Continental paid only a portion of TCR's defense costs. I now conclude that Continental had the obligation to pay all of TCR's defense costs and thus breached the insurance contract when it paid only half. Further, TCR could be entitled to its attorney fees in this action under ORS 742.061, assuming that the timing provisions of the statute are met. If TCR and Continental cannot resolve that issue, TCR may petition for attorney fees once Judgment is entered. I will address any disputes concerning the attorney fee statute then.

Defendant TCR's Motion for Relief from the Court's January 29, 2009 Opinion and Order (#102) is granted as explained above. I again ask the parties to attempt to propose a joint Judgment by March 4, 2009, or submit separate judgments along with arguments supporting their positions.

IT IS SO ORDERED.

Dated this 23rd day of February, 2009.

/s/ Garr M. King
Garr M. King
United States District Judge